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CITY AND COUNTY OF SAN FRANCISCO,
KEVIN WORRELL, and DAMIEAN FAHEY

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ADRIENNE MACBETH,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation;
KEVIN WORRELL, individually and in
his official capacity as a police officer for
the CITY AND COUNTY OF SAN
FRANCISCO, DAMIEN FAHEY,
individually and in his official capacity as
a police officer for the CITY AND
COUNTY OF SAN FRANCISCO; and
DOES 1-50, individually and in their
official capacities.

Defendants.

Case No. C07-3304 MEJ

**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS SECOND
THROUGH NINTH CAUSES OF
ACTION**

Hearing Date: September 20, 2007
Hearing Judge: Mag. Maria-Elena James
Time: 10:00 a.m.
Place: Courtroom B, 15th Floor

Date Action Filed: June 22, 2007
Trial Date: None Set

1 Defendants' MOTION TO DISMISS THE SECOND THROUGH NINTH CAUSES OF
2 ACTION IN PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM UNDER
3 FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6) came on for regularly noticed hearing on
4 September 20, 2007. Having considered the parties' submissions, heard argument, and considered
5 the relevant authorities, the Court hereby GRANTS Defendants' MOTION TO DISMISS WITH
6 PREJUDICE SECOND THROUGH NINTH CAUSES OF ACTION for the following reasons.

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8 *First:* Plaintiff's second cause of action for substantive due process is based on alleged
9 activity that is addressed by the Fourth Amendment, so there is not a valid Fourteenth Amendment
10 claim;

11 *Second:* Plaintiff's third cause of action for substantive due process and equal protection is
12 also based on alleged activity that is addressed by the Fourth Amendment, so there is not a valid
13 Fourteenth Amendment claim, and plaintiff has not stated any facts to support an equal protection
14 claim;

15 *Third:* Plaintiff's fourth through ninth causes of action, for state law relief, are barred as
16 plaintiff did not plead, and cannot do so based on matters judicially noticed, compliance with the
17 California Government Code requirements to file a government claim. Plaintiff's allegations
18 concern matters that are more than a year old, so her state laws claims are jurisdictionally barred.

19 Plaintiff's second through ninth causes of action are dismissed with prejudice.

20 IT IS SO ORDERED.

21 Dated: _____

22 _____
23 HONORABLE MARIA-ELENA JAMES
24 UNITED STATES MAGISTRATE JUDGE
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